Horkey v. *Kendall,* 53 Neb. 522, 73 N. W. 953; *Dobrey* v. *Western Mfg. Co.,* 57 Neb. 228, 77 N. W. 656, but this seems to be overruled by *Malcolm Savings Bank* v. *Cronin,* 80 Neb. 228, 114 N. W. 158, holding that such affidavit cannot be used in support of an attachment issued therein against the objections of the defendant. However, in support of the principal case that the affidavit taken before one of the counsel in the case cannot be received in evidence, see *Den* v. *Geiger,* 9 N. J. L. 281, and that it is unauthorized if taken before the attorney of record, *Tootle* v. *Smith,* 34 Kan. 27, 7 Pac. 577; *Wilkowski* v. *Halle,* 37 Ga. 678, 95 Am. Dec. 374, the court saying that, "Both upon principle and authority the attorney who may be a notary public is not authorized to take the affidavit and bond of his client and issue the attachment in a case where he is employed."

BANKRUPTCY—EFFECT OF DISCHARGE—RES ADJUDICATA.—In April, 1900, Youngman recovered a judgment on a debt owed him by Salvage. In January, 1902, Salvage filed a petition in bankruptcy. The judgment obtained by Youngman was included in the schedule of liabilities. Discharge in bankruptcy was refused. In May, 1906, Salvage filed a second petition, and was granted a discharge, the judgment being included. Later Youngman got execution on the judgment. On application of Salvage the state court made an order that the discharge in bankruptcy discharged Salvage from liability on the judgment. *Held,* on appeal, that the second proceedings and discharge barred the judgment. *Youngman* v. *Salvage* (1911), — N. D. —, 130 N. W. 930.

When the debts are identical the second petition is not maintainable after refusal of the first, the denial being res adjudicata, and the question of whether or not a bankrupt is entitled to be discharged from the debts scheduled is settled. *Kuntz* v. *Young,* 131 Fed. 719, 12 Am. B. R. 505. The court in *re Fiegenbaum,* 121 Fed. 69, 7 Am. B. R. 339, said, "Where the discharge is refused on the merits the judgment enures to the benefit of all the creditors. Both parties are bound by it, and neither party should be permitted to try the same question again. It is res adjudicata." Though this principle is apparently well settled, some difficulty has arisen in case part of the debts scheduled are the same and part different. Undoubtedly where all of the debts scheduled are new a former discharge or refusal has no effect on a succeeding discharge, and conversely where all the debts are the same the former discharge or refusal is final between the parties. Because the bankrupt has a right to apply for a discharge from new debts does it follow that he should have the right to throw the burden of new litigation upon the old creditors? Probably considerable of the difficulty lies in failing to determine just how far the first discharge or refusal is res adjudicata. The issue of a right to a discharge is res adjudicata as to a subsequent proceeding. *In re Kuffler,* 151 Fed. 12, 18 Am. B. R. 16. Right to a discharge is to be distinguished from the dischargeability of a particular debt. REMINGTON, BANKRUPTCY, § 2438. The dischargeability of the particular debt may not have been litigated. The discharge or refusal may have been res adjudicata merely as to an intentional failure to keep books of account, and so no adjudication as to the particular

debt. Evidently the court in the principal case was correct in its holding that if the creditor had any objections as to the right to a discharge, he should have interposed them in the second proceeding in bankruptcy.

BILLS AND NOTES—PRESENTMENT AND DEMAND BY TELEPHONE.—On the day of maturity of a note, made payable at the makers' residence, the cashier of a bank called up the maker at the latter's residence, on the telephone, stated to him that the bank held the note for collection, described it, and asked him what he would do with it. The maker replied that he could not pay it. The note was protested without any further presentment, and notice of protest was mailed to the defendant, now sued as indorser. *Held,* that the demand by telephone was insufficient. *Gilpin* v. *Savage* (1911), — N. Y. —, 94 N. E. 656.

Section 133 of the New York Neg. Ins. Law provides that an instrument is presented at the proper place when presented at the place of payment specified therein. If due presentment is not made at the place specified in the note, the indorser is discharged from all liability. STORY, PROM. NOTES, § 227. His undertaking being conditional, unless there be a strict compliance with the condition no right can attach against him. The principal case reversed the judgment of the Appellate Division of the Supreme Court (112 N. Y. Supp. 802). The lower court held the demand sufficient on the ground that commercial transactions and conversations had over the telephone have been recognized as of the same binding force as where the parties talked face to face. *Globe Printing Co.* v. *Stahl,* 23 Mo. App. 451, 458; *Wolfe* v. *Mo. Pac. R. R. Co.,* 97 Mo. 473, 11 S. W. 49, 3 L. R. A. 539, 10 Am. St. Rep. 331; *Murphy* v. *Jack,* 142 N. Y. 215, 36 N. E. 882, 40 Am. St. Rep. 590; *Deering Co.* v. *Shumpik,* 67 Minn. 348, 69 N. W. 1088. A valid presentment, however, consists of something more than a mere demand. There must be an actual exhibition of the instrument itself, or else the demand should be accompanied by some clear indication that the instrument is at hand, ready to be delivered; and such must really be the case. DANIEL, NEG. INS., § 654; *Carlisle* v. *Holdship,* 15 La. 375; *Whitewell* v. *Johnson,* 17 Mass. 449. That rule implies that the person making the demand must be present at the proper place of demand, his own physical presence being necessary in order to exhibit the instrument. It has been said that possession of the instrument by the person making the demand, without actual exhibition of it, is sufficient. *King* v. *Crowell,* 61 Me. 244. That statement was accurate when made before the general use of the telephone, but has become inaccurate, when taken literally, since the introduction of the telephone. "When demand is made by the ordinary human vocal power, unaided by mechanical device, it is plain that the person making the demand is necessarily present at the place at which the demand is made; and if the instrument is in his possession, the presence of the instrument at the proper place is equally clear." To sanction the rule that presentment and demand may be made over the telephone, would mean that due presentment and demand of a note, payable at a certain place in New York, could be made as far away as Chicago or Denver, thus defeating, among other things, the opportunity, of the party called upon, to judge of the genuineness of the instrument and of the holder's right to the paper.